

Panaji, 17th February, 2022 (Magha 28, 1943)

SERIES II No. 47

OFFICIAL GAZETTE

GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

Note:- There are four Extraordinary issues to the Official Gazette, Series II No. 46 dated 10-02-2022 as follows:—

- (1) *Extraordinary dated 10-2-2022 from pages 1271 to 1272 regarding Notifications from Department of General Administration.*
- (2) *Extraordinary (No. 2) dated 11-2-2022 from pages 1273 to 1282 regarding Orders from Department of Home and Notification from Department of Law & Judiciary.*
- (3) *Extraordinary (No. 3) dated 11-2-2022 from pages 1283 to 1286 regarding Order from Department of Home.*
- (4) *Extraordinary (No. 4) dated 15-2-2022 from pages 1287 to 1288 regarding Orders from Department of Finance.*

GOVERNMENT OF GOA

Department of Co-operation
Office of the Asstt. Registrar of Co-operative
Societies

Notification

No. RES-(a)-179/BZ/Goa/1042

- Read: 1. This office Memo No. RES-(a)-179/Goa dated 13-11-1964 Registering the Bicholim Taluka Government Teachers Co-operative Primary Co-operative Credit Society Ltd., Bicholim-Goa.
2. This office Memo No. RES-(a)-179/NZ/Goa dated 7-9-2009 Adoption of new bye-laws in consonance with the Goa Co-op. Societies Act, 2001 and Rules, 2003.
3. Letter dated 10-1-2022 from the Secretary, Bicholim Taluka Government Primary Teachers Co-op. Credit Society Ltd., Bicholim-Goa.

In exercise of the powers vested in me under Section 13 of the Goa Co-op. Societies Act, 2001 and Rule 12 of the Co-op. Societies Rules, 2003, the original Registration Certificate of the Bicholim Taluka Government Teachers Co-operative Primary Co-operative Credit Society Ltd., Bicholim-Goa is hereby amended and the amended certificate is as under.

Certificate of Registration

The Bicholim Taluka Government Primary Teachers Co-op. Credit Society Ltd., Bicholim-Goa is registered on 13-11-1964 and it bears registration No. RES-(a)- 179/Goa and it is classified as "Resource Society" in terms of Rule 8(1)(10) and sub-classified as "Credit Resource Society" under sub-rule 10(a) of Rule 8(1) of the Goa Co-op. Societies Rules, 2003.

Rajendra B. N. Satardekar, Asstt. Registrar,
Bicholim Zone (Co-operative Societies).

Sankhali, 31st January, 2022.

Department of Housing

Order

No. 2/19/2007/HSG/Part/10

Government of Goa is pleased to accept the resignation tendered by Shri Girish Kumar Pillai, as Member of Goa Housing Board with effect from 18-01-2022, being the date of the letter of resignation.

By order and in the name of the Governor
of Goa.

Michael M. D'Souza (IAS), Additional Secretary
(Housing).

Porvorim, 11th February, 2022.

Department of Industries

Order

No. 10/5/2019-IND/23

Government of Goa is pleased to accept the resignation of Shri Antonio C. Fernandes, MLA of Santa Cruz, as Chairman of Goa Khadi & Village Industries Board with effect from 27-01-2022, being the date of his letter of resignation.

Further, in terms of Circular No. 7/7/2016/PER/133 dated 13-01-2022, issued by Department of Personnel, Government of Goa, Secretariat, Porvorim, the Secretary (Industries) shall hold the charge of the position of Chairman, Goa Khadi & Village Industries Board until further orders.

By order and in the name of the Governor of Goa.

Amalia O. F. Pinto, Under Secretary (Industries).
Porvorim, 10th February, 2022.

Department of Labour

Notification

No. 28/2/2022-LAB/76

The following Award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 20-01-2022 in Ref. No. IT/25/2014 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Amalia O. F. Pinto, Under Secretary (Labour).
Porvorim, 10th February, 2022.

IN THE INDUSTRIAL TRIBUNAL AND
LABOUR COURT
GOVERNMENT OF GOA
AT PANAJI

(Before *Ms. Bela N. Naik*, Hon'ble
Presiding Officer)

Ref. No. IT/25/2014

Smt. Anupa Desai,
Rep. by the General Secretary,
Gomantak Majdoor Sangh,
G-5, Macedo Apartments,
Tisk, Ponda-Goa ... Workman/Party I.

V/s

M/s Merck Limited/
M/s Procter & Gamble
Marwasado,
Usgao-Goa ... Employer/Party II.

Workman/Party I represented by Learned Adv. Shri S.P. Gaonkar along with Adv. Ms. Eruska Dias.

Employer/Party II represented by Adv. Shri G.K. Sardesai along with Advocate Ms. N. Gaonkar.

AWARD

(Delivered on this the 20th day of the month
of January of the year 2022)

By order dated 18-09-2014 bearing No. 28/26/2014-Lab/534, the Government of Goa in exercise of powers conferred by Section 10(1)(d) of the Industrial Disputes Act, 1947 (for short "The Act"), has referred the following dispute to this Tribunal for adjudication.

"(1) Whether Smt. Anupa Desai, Store Executive, can be construed as "workman" as defined under Section 2(s) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947)?

(2) If the answer to the issue No. (1) above is in the affirmative, then whether the action of the management of M/s Merck Limited, Maraswado, Usgao, Goa in terminating the services of Smt. Anupa Desai with effect from 04-01-2014 is legal and justified?

(3) If the answer to the issue No. (2) above is in the negative, then to what relief the workman is entitled?"

2. Upon receipt of the reference, it was registered as IT/25/2014 and registered A/D notices were issued to both the parties. Pursuant to service of notices, Party I filed the Claim Statement at Exb. 4. Thereafter, the Party II filed its Written Statement which is at Exh. 6.

3. In short, the case of the Party I is, she states that she was employed initially as Analytical Chemist by the Party II w.e.f. 06-03-1996 and since her appointment she was regular in her duties having clean service records and though she was designated as Executive her routine work was of skilled and clerical nature and vide letter dated 13-09-2013 she was transferred to the Stores Department and the work allotted to her in the Stores Department was presently being carried out by the other workmen in Stores Section and such workmen are considered and confirmed as 'workmen' under the Industrial Disputes Act and besides the duties allotted to her in the Stores Room she was also doing clerical work related to the Stores and no employees were working

under her nor she was supervising any work of any workers and she was also not sanctioning and recommending authority to sanction the leave of other workers. She was doing the work of skilled and clerical work and as such she was a 'workman' as defined under the I. D. Act, 1947.

4. She further states that she was issued a Termination Letter dated 04-01-2014 and her services were illegally terminated w.e.f. 04-01-2014 and upon receipt of the said Termination Letter, she made a letter dated 10-01-2014 and made a demand for reinstatement before the Management. Since her termination letter was not withdrawn she raised a dispute before the Asst. Labour Commissioner, Ponda through her Union, Gomantak Mazdoor Sangh vide Union letter dated 15-01-2014 and upon the receipt of the said letter, the Asst. Labour Commissioner, Ponda called both the Parties for joint discussion and during the said meeting the Management filed their Written Statement vide their letter dated 03-03-2014. That, upon receipt of the copy of the Written Statement of the Management, the workman vide Union's letter dated 03-04-2014 submitted their detailed Rejoinder denying the contentions of the Management.

5. The Party I states that since the Employer was adamant, the matter ended in failure and according to her the Termination Letter dated 04-01-2014 is illegal, unjustified and bad in law as the same is not signed by the Appointing Authority and before her termination, the Management has not conducted any inquiry and hence violated the principles of natural justice and the Management has not issued her any charge-sheet nor any inquiry was conducted against her.

6. The Party I further states that the Party II is employing more than 200 workers working in the said factory and hence Chapter V B of the I. D. Act is applicable to them. That before her termination, the Management has not obtained the permission of retrenchment as required u/s 25 N of the I. D. Act and as such she is also entitled for reinstatement with full back wages as no notice pay and retrenchment compensation were paid to her. She states that since past one year, the Officials of the Company were harassing her and she had made representations as per the Code of Conduct of the Company and since she made representations to the higher Management in order to take revenge, she has been victimized by way of termination. The Party I states that before the termination of her service, no inquiry was conducted and hence principles of natural justice were not followed and after her termination she is unemployed and as such she prays that her application be granted as prayed.

7. In the Written Statement, the Party II has raised the preliminary objections and states that the present reference is null and void and that the Party II is engaged in the manufacturing of pharmaceutical products at its Factory at Usgao, Ponda-Goa and employs various employees in different categories and status. There is also hierarchy in the organization which is with the Directors at the top followed by Associate Director, Manager, Senior Officers, Operator, Process worker, Helper and the Party I had applied for the post of Micro-Biologist/Analytical Chemist by application dated 25-07-1994 and considering her educational qualifications and her previous employment, she was initially appointed as a 'Trainee Analytical Chemist' in the Quality Control Department in the Supervisory Grade. The initial appointment for Trainee was followed by an appointment letter dated 12-04-1996 as a Probationer in the Supervisory Grade in the Quality Control Department and as per her appointment letter she was entitled for House Rent Allowance, Educational Allowance, Reimbursement towards Conveyance Expenses, Telephone Expenses, Medical Reimbursement, Leave Travel Assistance and she was also eligible to join the Company Staff Provident Fund. The appraisal of the Party I was conducted by the Director and she was subsequently confirmed as Analytical Chemist.

8. It is further stated that the Quality Control is the most vital and significant area of operation in every manufacturing Unit and by a letter dated 02-04-2007 she was informed about the revision of her emoluments as a Supervisor and her salary was raised from 15,729/- to 17,480/- and thereafter she was promoted as Executive Quality Control and her emoluments were revised accordingly. That, upon her promotion as an Executive Quality Control in the Micro-Biology Section, she was among other functions training new recruits in the Micro Biology Section and planned daily activities of the said Section and was responsible for maintaining safety, occupational health and environment and was responsible for ensuring quality and she was checking the reports of the analysis carried out by the Junior Supervisors and the Helpers and Junior Supervisors were reporting to her.

9. That, by letter dated 15-06-2013, she was transferred from Micro Biology Section to Chemical Quality Section under the Quality Control Department which she was responsible for ensuring the quality in the sampling of raw materials and chemical analysis and by a letter dated 13-09-2013, she was transferred from Quality Control Department to the Stores Department and as such she was responsible for ensuring that the dispensation of

material and its receipts and issues were in accordance with the procedure laid down and in all the Departments she exercised exclusive control and independence in the area of operations assigned to her and both in the Quality Control Department and also in the Stores Department she was employed in the Supervisory Cadre and performed supervisory functions and hence she was not a 'workman' under the Industrial Disputes Act and as such the reference is null and void.

10. It is further stated that since she was in the supervisory category she was not the member of the Gomantak Mazdoor Sangh or of any Union and therefore the Gomantak Mazdoor Sangh could not have raised the industrial dispute on behalf of Party I and as such the reference is also bad on this count.

11. The Party II states that the reference is under Section 10(1) of the I. D. Act, 1947, espoused by the Union and is not a dispute referred under Section 2(a) of the I. D. Act and that in order to convert such individual dispute as a collective dispute, it should be espoused by a substantial segment of workmen of the Party II workmen employed in the factory. It is stated that as such dispute was not espoused by a substantial segment of the workmen in the factory, it could not be converted into a collective dispute and therefore the Gomantak Mazdoor Sangh was not competent to raise the industrial dispute and hence the reference is incompetent and therefore null and void. The Party II further states that pursuant to the termination of Party I by letter dated 04-01-2014, she had accepted the said termination vide her mail dated 13-01-2014 and requested the Company to provide her with an experience certificate and the Party II vide letter dated 10-01-2014, the Party II sent to the Party I all her legal dues in full and final settlement which were accepted by the Party I. Thereafter, the Party II sent the experience certificate dated 22-01-2014 to the Party I which was accepted by the Party I and therefore the Party I is estopped from raising any dispute on the subject matter. The Party II therefore prays that for all the aforesaid reasons, the reference ought to be rejected at the threshold.

12. The Party II denies that the services of Party I were illegally terminated and also denies that the Employer was adamant and according to them because she was not sanctioning leave does not ipso facto means that she was a 'workman' and they deny that she was regular in her duties or had clean service records and the letter of transfer dated 15-06-2013 transferring her from Micro-Biology Section to Chemical Quality Section was because of her inefficiency and failure to complete the work. The representations made by her were itself symptomatic

of her troubled relationship with her superiors and her unseemly conduct. The Party II states that they are now informed that the Party I has been gainfully employed from the date of her termination and continues to be gainfully employed till date and immediately upon her termination she was employed with M/s Choksi Laboratories Limited at Verna – Goa and thereafter with M/s Fresenius Kabi at Sattari and continues to be employed and hence it is prayed that the reference may be rejected and that the Party I is not entitled for any reliefs.

13. In the Rejoinder at Exhibit 7 the Party I denied the case put forth by Party II in the Written Statement.

14. That during the pendency of the present reference, the Employer/Party II filed an application for amendment of cause title at Exh. 62 stating that an amendment in the cause title is necessary as M/s Merck Limited has been taken over by M/s Procter and Gamble Health Limited on 01-12-2018 and hence the name of the Company has been changed from M/s Merck Limited to M/s Procter and Gamble Health Limited with effect from 06-05-2019. This amendment was allowed by my Learned Predecessor vide order dated 22-07-2019 and hence the amendment in the cause title is done to that effect.

15. Based on the above mentioned pleadings my Learned Predecessor has framed the issues at Exh. 10 and the same are as follows:

Issues

1. *Whether the Party I proves that she is a 'workman' as defined under Section 2 (s) of the Industrial Disputes Act, 1947?*

2. *Whether the Party I proves that Party II has not complied with provision of Industrial Disputes Act and principles of natural justice were not followed and hence the action of the Management in terminating her services w.e.f. 14-01-2014 is illegal, unjustified and bad in law?*

3. *Whether the Party I proves that she is unemployed since the date of her termination?*

4. *Whether the Party II proves that Gomantak Mazdoor Sangh was incompetent to raise Industrial Dispute and hence the reference is null and void?*

5. *What relief? What Award?*

16. In the course of evidence, the Party I/ /Smt. Anupa Desai examined herself as its first witness and she has placed on record the copy of Appointment Letter dated 12-04-1996 at Exh. 13, copy of letter dated 08-07-2013 at Exh. 14, copy of transfer letter dated 13-09-2013 at Exh. 15 Colly, copy of Warning Letter dated 16-11-2013 at Exh. 16, Copy of

reply to show cause notice dated 26-11-2013 at Exh. 17, copy of termination letter dated 04-01-2014 at Exh. 18, copy of demand letter dated 10-01-2014 along with copy of postal receipts at Exh. 19 Colly, copy of joining of Union letter dated 01-01-2014, copy of Union letter dated 15-01-2014 to the ALC at Exh. 21, copy of notice dated 20-01-2014 of ALC at Exh. 22, copy of notice dated 11-02-2014 of ALC at Exh. 23, copy of forwarding letter dated 03-01-2014 along with Rejoinder on behalf of the workman at Exh. 24 Colly and copy of the failure report dated 25-06-2014 at Exh. 25.

17. During cross-examination documents placed on record through this witness; copy of the application for the post, dated 25-07-1994 along with joining notice, addendum and organization chart at Exh. 26 Colly, copy of Certificate dated 22-01-2014 at Exh. 27, copy of Analytical Report dated 11-04-2012 at Exh. 28, Microbial Limit Test Report (IP) dated 11-04-2012 at Exh. 29, copy of Analytical Report dated 26-03-2012 at Exh. 30, copy of Trainee Analytical Chemistry dated 02-03-95 along with copy of revision in the emoluments and responsibility, copy of letter of promotion dated 15-05-2008, copy of letter of transfer dated 15-06-2013, copy of reply dated 06-07-2013, copy of letter dated 08-07-2013, copy of reply dated 06-08-2013, copy of reply dated 08-08-2013, copy of letter dated 26-08-2013, copy of reply of Party I dated 23-09-2013, copy of e-mail of Party I dated 12-11-2013, copy of e-mail dated 14-01-2014 and copy of letter of Party II dated 21-01-2014 at Exh. 32 Colly (34 pages) and copy of copy of additional list of documents at Exh. 31 (pgs. 12, 13, 16, 18, 20, 21 to 32, 33 to 36, 37 to 38, 39 to 40, 52 to 59 and 60) at Exh. 33 Colly.

18. The Party II examined Shri Chandrakant Naik as its first witness and during examination-in-chief, placed on record copy of transfer to the Stores Department dated 13-09-2013 at Exh. 37 and during cross-examination of this witness, copy of list of authorized personnel to enter D. P. Godown dated 26-11-2013 at Exh. 38, copy of settlement dated 03-05-2013 at Exh. 39, copy of list of names of the permanent workers in Stores Department in 2013 at Exh. 42 and copy of the Performance Management Form at Exh. 43. Party II examined its 2nd witness Shri Vijay Tubki and through this witness during his examination-in-chief placed on record copy of letter dated 05-03-2008 at Exh. 46, copy of letter dated 10-01-2014 along with annexures at Exh. 48 Colly, copy of letter dated 03-03-2014 to ALC, Ponda at Exh. 49, copy of minutes of conciliation proceedings dated 15-04-2014 at Exh. 50, copy of training record of Media Handling & Preparation at Exh. 51 Colly, copy of pay Slip of Divkar Sudesh & Bakhle Pradip at

Exh. 52 Colly, copy of comparison of management cadre and workmen cadre under settlement dated 03-05-2013 at Exh. 53 Colly, copy of pay slips of Suhas Gawade at Exh. 54 Colly, and copy of extract of Sterility Testing by Membrane Filtration technique of Party I and Ms. Manisha Gaonkar at Exh. 55 Colly.

19. The 2nd witness of the Party II is Shri Vijay Tubki who was examined and through his cross-examination he placed on record copy of the resignation letter dated 09-07-2020 of Party I at Exh. 68-D, copy of Relieving Letter dated 08-08-2020 of Party I at Exh. 69-D, copy of Code of Conduct at Exh. 71-D and a copy of Certified Standing Orders at Exh. 72-D.

20. Heard arguments, Learned Advocate, Shri S. P. Gaonkar argued on behalf of Party I and Learned Adv. Shri G. K. Sardessai is present for the Party II. Both the Parties have placed on record written submissions.

21. I have gone through the records of the case and has duly considered the arguments advanced and also the arguments placed on record and after going through the same, I have given my reasons and findings on the issues which are framed and the same are as follows:

Issue No.1 and 4Already decided as Preliminary Issues.

Issue No. 2 In the affirmative.

Issue No. 3 In the affirmative.

Issue No. 5 As per the final Order.

REASONS

Issue No. 1 and 4

22. Issue No. 1 and 4 were treated as preliminary issues and my Learned predecessor decided both these issues by passing Part Award dated 28-02-2020 deciding both these issues in favour of the workman/ Party I and held that the Party I is a 'workman' as defined u/s 2(s) of the I. D. Act, 1947 and further held that Gomantak Mazdoor Sangh (GMS) is competent to raise the industrial dispute. That when this Part Award was challenged before the Hon'ble High Court by the Party II, the Hon'ble High Court by Judgement dated 05-07-2021 in Writ Petition No. 222/2021 has confirmed the preliminary Award of this Tribunal and directed the Party II to pay a cost of Rs. 25,000/- to the Party I within four weeks from the date of passing the said Order.

Issue No. 2

23. The Party I/Mrs. Anupa Dessai has examined herself after which she closed her case and on behalf of the Employer they examined Shri Chandrakant

Naik working as Asst. Manager and Shri Vijay Tubki working as Senior Manager with the Party II after which they closed their case.

24. The Party I/Mrs. Anupa Desai has mentioned in her Affidavit in Evidence the detailed facts of her case and has placed on record various documents from Exh.13 to Exh. 25 in support of her case. That, according to her she was initially employed with the Party II w.e.f. 12-04-1996 and she has produced the copy of the Appointment Letter dated 12-04-1996 which is at Exh. 13 as an Analytical Chemist and since then she had been in continuous and unblemished service till her illegal termination of service. She was also continuously promoted and vide letter dated 13-09-2013 which is at Exh. 25 Colly which is a copy of Transfer Letter along with Annexure-I, she was transferred to the Stores Department and was asked to do the duties of performing day to day activities of receipts and issues, SAP Data Entries, dispensing the material, filing of documents, recording of day CGMP documents and recording of dips of tank material and other responsibilities which were assigned to her by the Reporting Manager.

25. She has mentioned the nature of her duties she was doing and states that on 04-01-2014 she was issued the termination letter and her services were illegally terminated w.e.f. 04-01-2014 and the copy of the termination letter dated 04-01-2014 is at Exh. 18. It is her case that the termination letter/Exh.18 is illegal, unjustified and bad in law as the same is not signed by the Appointing Authority and before her termination, the management has not conducted any inquiry and has thus violated the principles of natural justice and the Management has also not issued her any charge-sheet. She also alleges that a revengeful act has been done by the Management by terminating her which amounts to victimization and before her termination, the Management has not obtained the permission of retrenchment as required u/s 25 N of the I. D. Act, 1947 and at the time of her termination no notice pay and retrenchment compensation were paid to her and it is also her allegation that one year prior to termination the officials of the Company were harassing her and she had made representation as per the Code of Conduct.

26. From the evidence of the Party I, her pleadings vis-à-vis her documents shows that admittedly she was terminated vide letter dated 04-01-2014/Exh.18 with immediate effect and upon receipt of this termination letter she made a letter to the Management which is dated 10-01-2014 which is at Exh.19 Colly making a demand for her reinstatement and since her termination letter was not withdrawn, she raised a dispute before the ALC, Ponda through

Gomantak Mazdoor Sangh Union vide letter dated 15-01-2014 which is at Exh. 21 and upon receipt of this letter the ALC, Ponda called both the Parties for joint discussions and during the said meetings, the Management filed the Written Statement vide letter dated 03-03-2014 and upon receipt of the copy of the Written Statement of the Management, the Union made a letter dated 03-04-2014 submitted their detailed Rejoinder and denying the allegations and the contentions of the Management and hence she states that as the Employer was adamant the matter ended in failure. She has produced the copy of the Failure Report dated 25-06-2014 which is at Exh. 25. All this goes to show that the Party I has taken timely and effective steps upon receipt of the termination letter. Since it is a allegation that the said termination is illegal, unjustified and bad in law as the Management has not obtained the permission for retrenchment as required under Section 25 N of the I. D. Act, it becomes necessary to look into the same.

27. I have perused Section 25 N of the Industrial Disputes Act, 1947 which reads as follows:

Section-25 N of the Act lays down conditions precedent to retrenchment of workmen:-

Section 25-N of the Act lays down two conditions before retrenchment of a workman can be effected which are: (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment or paid in lieu such notice wages for the said period; and (b) the prior permission of the appropriate Government has been obtained by the employer on an application made in this behalf. Sub-section (2) of Section 25-N provides for the manner in which the application for permission under sub-section (1) is required to be made. Sub-section (3) of Section 25-N postulates grant or refusal of such permission by the appropriate Government upon making such enquiry as it may think fit after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, and also having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors. Sub-section (4) of Section 25-N provides that when an order passed by the appropriate Government is not communicated within a period of sixty days from the date on which such application is made, the permission applied for, shall be deemed to have been granted on the expiration of the said period. Sub-section (7) of Section 25-N provides for the consequences emanating from non-making of application for permission under sub-section (1) or where such permission has been refused, stating that

the retrenchment of the workman shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him. The only exception provided for as regards grant of exemption from the operation thereof is contained in sub-section (8) thereof i.e. in a case where the appropriate Government is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it may by order direct that the provisions of sub-section (1) shall not apply in relation to such establishment.

28. Vis-à-vis this provision it becomes necessary to look into the evidence of the Party II led through Shri Vijay Tubki which is at Exh. 45 who was working as a Manager with the Party II and he mentions in his Affidavit-in-Evidence the facts of their case. He has produced the copy of the letter dated 05-03-2008 consisting of 17 pages which is at Exh. 46 and other documents from Exh. 48 to 55 Colly. In his cross-examination he states that he is working as a Manager-Soft Gel Production and products and process innovation since May, 2018 and he has nothing to do with the Stores Department of Party II throughout his employment and the own pleadings of the Party II makes it clear that initially the Party I was employed as Analytical Chemist from 06-03-1996 and vide transfer letter dated 13-09-2019 she was transferred to the Stores Department. Hence, here a question that arises to my mind is that when this witness has admitted that he has nothing to do with the Stores Department of Party II throughout his employment how can he elaborate the Party I's case and her conduct when on his own pleadings he has nothing to do with the Stores Department. He has admitted in cross that he is not aware of any Wage Settlement signed with the Goa Trade and Commercial Workers' Union and he is not aware as to how many executives worked in Stores Department since 1990 and he mentions the name of another lady Staff such as one Sylvia prior to Anupa Desai who was working in the Stores Department when the Stores Department was one Department and also one Pushpa and he admits that he is not aware whether she was working with the Party I workmen. Further, he states that the Party I was working as an Executive-Micro Biologist and she was reporting to him when she was working in Micro-Biology section and he is not aware whether the Party I made any personal complaint against him which appears to be quite strange. He is also not aware of the reply/letter dated 06-07-2013 i.e. pages 21 to 23 of Exh. 32 Colly. He admits that he has not sent any adverse report

against the Party I workman when she was working under him. It is also seen through the deposition of Shri Tubki that the Employer was satisfied of the performance of Party I which is evident from the letter dated 02-04-2008 of Exh. 32 Colly wherein on pg. 15 a letter is made to Party I stating that the Management has decided to revise emoluments based on her performance and responsibilities and the details of the revised emoluments as applicable to her was w.e.f. 01-04-2007 which documents are attached along with the said letter dated 02-04-2008 at Exh. 32 Colly. The contents of this letter at Exh. 32 Colly shows that the Management was happy about the 15-06-2013 vide same Exhibit her services were transferred from Micro Biology Section to Chemical Analysis Section in Quality and Control Department. It is also noticed that in this letter of transfer it is mentioned that the Management had come to the conclusion that Party I was not able to manage the routine work effectively and as per the standards required by the Management and there is a mention of certain issues relating to her past performance and further mentions that her such lapses or negligence is not acceptable and therefore the Management has decided to transfer her services from Micro Biology Section to Chemical Analysis Section in Quality and Control Department. This letter shows that the Management was having some sort of grudge against her and therefore has described the lapses in her work but it is to be noted here that the details of all such incidents were never forwarded to her nor any disciplinary action was taken against her and therefore a doubt and a question arises in my mind that only to transfer her, some lapses are quoted on the letter dated 15-06-2013.

29. The Party I was surprised with the sudden change in her role in the service and as such she sent a letter dated 06-07-2013 of Exh. 32 Colly, Page 21 wherein she has mentioned the details to the Works Manager and she has also mentioned that she does not agree to the alleged lapses and negligence on her performance and therefore she gave explanation para-wise-para by this letter. This goes to show that she made representation and submitted her explanation on every issue raised by the Management against her and inspite of this the Management did not take any disciplinary action against her.

30. Further she has also mentioned on Page-24, 25 and 26 to 28 of Exh. 32 Colly the details of the false allegations and harassment caused to her at workplace by Mr. Vijay S. Tubke. She has narrated every incident with details. The Management has replied to this letter, by letter dated 06-08-2013 made by the Manager-Personnel Shri Vaibhav Khorgaokar

that whatever harassment she has mentioned to her other colleagues in the same department are not accepted by them as no co-worker has shared the same and he also mentioned that a proper meeting would be held and vide letter dated 26-08-2013 the Management even sent her a letter to finalize the date for conversation to be made at the Conference Hall of the Administrative Building of the Factory. That by letter dated 23-09-2013 Page-34 of Exh. 32 Colly, the Party I made representation to the Personnel Manager mentioning in detail the issues which led to her second transfer. She has also mentioned certain points by which according to her there was no actual requirement for transfer however, the transfer was accepted. Thereafter, the Party I was issued a Warning Letter dated 16-11-2013/Exh.16 stating that she did not respect her co-worker namely Shri Vaibhav Khorgaonkar who was the Personnel Manager and this letter was in the form of a show cause notice for which an explanation was sought from her regarding the incident dated 13-11-2013 and by letter dated 26-11-2013/Exh.17 the Party I wrote a letter to the General Manager explaining her conduct and also mentioned the detailed explanation regarding her previous performance and representation and the issues which were never addressed and in spite of all this, it is quite surprising that the Management did not conduct any domestic inquiry with respect to her behavior and her performance and by letter dated 04-01-2014 the services of Party I were terminated on the grounds of misconduct, loss of confidence and before terminating her services the Employer did not follow the mandatory provisions of the I. D. Act.

31. Now coming to the evidence of Shri Chandrakant Naik who was working as an Asst. Manager-Warehouse of the Party II and he has mentioned in his Affidavit-in-Evidence the details as regards to the work pattern more precisely of Party I and he has also mentioned that she was transferred to the Stores Department vide letter dated 13-09-2013 w.e.f. 16-09-2013 and was working as an Executive Warehouse-Chemical at which time he was Asst. Manager and she was reporting to him. He has also mentioned about the nature of the work allotted to her and it is to be noted here that the entire Affidavit-in-Evidence does not make any mention or whisper of her alleged misconduct, disobedience or negligence. Therefore, to my mind his Affidavit-in-Evidence is of no use to Party II in deciding the instant case. He has produced the copy of transfer of Stores Department dated 13-09-2013 at Exh. 37. It is further to be noted here that he has admitted in his cross that on Exh.15 Colly which is a Transfer Letter dated 13-09-2013, he has not signed on the said Letter of

Transfer and according to him the annexure to the Transfer Letter at Exh. 15 Colly specifies the duties and job responsibilities of Party I. He admits that on Exh. 15 Colly there is not mention that the Party I should report to him whereas in his Affidavit-in-Evidence he states otherwise. The rest of the cross-examination is of denials. Further he has stated that they did not conduct inquiry when the show cause notices were issued to the Party I for her behavior because she had accepted the charges and further he states that the Party I had not given anything in writing with regards to the acceptance of charges when Exh.16 which is a show cause notice, he states that this letter was not issued for her performance but it was issued only for code of conduct. The rest of the cross-examination does not help or benefit the Party II in respect of the allegations made by them against the Party I.

32. Therefore, from the entire evidence on record vis-à-vis the documents it is abundantly clear that before terminating the services of the Party I, the Employer did not follow the mandatory provisions of the Industrial Disputes Act, 1947. Both the witnesses examined by the Party II have not mentioned anywhere as to for what purpose the Employer lost confidence in Party I and what was the exact nature of the secrecy of her job which she had not complied with. Not a single act of misconduct has been mentioned by either of the witnesses of the Management nor any witnesses are examined in support of this. There is no iota of evidence to show that what were the precise instances of the alleged misconducts or acts of the Party I which led to loss of confidence in the employee and moreover this loss of confidence must relate to the nature of the duties allotted to her immediately or prior to the date of her termination.

33. It is also seen that except issuing the Warning Letter dated 16-11-2013 at Exh. 16, the Employer did not take any action against her and moreover by not conducting any domestic inquiry or disciplinary inquiry forces me to come to a conclusion that her services were terminated without following the mandatory provisions of law and without giving it a colour of punitive disposal. It is also seen that the Party II wants to cover up their act by stating that the termination was punitive more so when it was actually a dismissal and there is no mention of any charges nor any strong reasons as to why the domestic inquiry was not conducted.

34. Learned Advocate, Shri S. P Gaonkar on behalf of the Party I has relied on the following authorities:

1. Engineering Laghu Udhog Employees Union v/s Judge Labour Court (2003) 12 SCC 1, the Apex Court has observed that "We may,

however, observe that although in certain contingencies an employer may in a case of grave nature of misconduct dismiss a workman without holding an enquiry but ordinarily such an enquiry will not be dispensed with. In the event it is found ultimately by the Labour Court/Industrial Tribunal that the employer had taken recourse to unfair labour practice or the order of termination has been passed malafide or by way of victimization, it will be open to the Tribunal to pay compensation even in a case where ultimately charges are proved, despite holding that the order of termination is valid for the reason that principles of natural justice have not complied with."

2. Sher Bahadur v/s Union of India (2002) 7 SCC 142 wherein the Apex Court has observed at para 7 as under: *"7. It may be observed that the expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law.*

3. Kanhaiyalal Agarwal v/s Factory Manager (2001) 9 SCC 609, the Apex Court has held that *"What must be pleaded and proved to invoke the aforesaid principle is that (i) the workman is holding a position of trust and confidence; (ii) by abusing such position, he commits acts which results in forfeiting the same; and (iii) to continue him in service would be embarrassing and inconvenient to the employer or would be detrimental to the discipline or security of the establishment. All these three aspects must be present to refuse reinstatement on ground of loss of confidence. Loss of confidence cannot be subjective based upon the mind of the Management. Objective facts which would lead to a definite inference of apprehension in the mind of the Management regarding trustworthiness or reliability of the employee must be alleged and proved. Else, the right of reinstatement ordinarily available to the employee will be lost."*

35. I have perused all the above authorities in deciding the present case and I am in total agreement with the settled position of law and the ratios applied in all the above cases gets squarely applicable to the case in hand.

36. In the Claim Statement the Party I has pleaded that the Party II is employing more than 200 workers working in the said Factory at the time of her termination or before her termination and hence Chapter VB of the Industrial Disputes Act gets

applicable to the Party I and the Employer did not obtain any permission u/s 25-N prior to her termination by the Party II and this position is precisely admitted by the witness of the Management Shri Vijay Tubki who in his cross-examination states that there were more than 250 workers working at the Factory of Party II. He has also admitted that Party I had made a letter to the Management of Party II stating that he was harassing her which letter is at Exh.14 admitted by this witness. To this Learned Adv. Shri S. Gaonkar on this aspect has placed his reliance on the authority reported in the case of **Oswal Agro Furane Ltd. and another v. Oswal Agro Furane Workers' Union and others, reported in (2005) 3 3 SCC 224**. The question arose as to whether the provision of Section 25-O and 25N of the Industrial Disputes Act are imperative in nature. After holding that the provision is held to be constitutionally valid, the Apex Court has held in Para 14 of its decision. Hence, the provisions of Section 25-O and 25-N of the I. D. Act clearly stipulates that the Employer who intends to close down the undertaking and/or effect retrenchment of workmen working in such industrial establishment is bound to apply for prior permission atleast 90 days before the date of which the intended closure is to take place and Section 25-O speaks of procedure for closing down an undertaking. Thus it is clear that obtaining prior permission from the Appropriate Government is mandatory in nature which is admittedly not done in this case and no retrenchment compensation was also paid as required under Section 25-F of the I. D. Act which clearly proves the statutory violations made by the Employer while terminating the services of the Party I.

37. Learned Advocate, Shri G. K. Sardessai on behalf of Party II has argued that the Party I was not able to manage her work effectively as per the standards required by the Management from Micro-Biology Section under Quality Control Department but, the Management has not specified in detail as to what were the exact norms and standards required by the Management and what were the lapses on her part and if this was the real position then why did the Management not hold any domestic inquiry but chose to transfer her and then subsequently terminated her services without following the due process of law. Further arguments advanced that only to improve her performance, she was offered a conservation session so that she gets a fair opportunity to express her views also cannot be believed without leading evidence to that effect and nothing purposeful has occurred after the conversation session which was held on 19-08-2013 and further there is nothing on record to show that

there was no improvement in her work and the fact that she was transferred to the Stores Department is highly objectionable and unjustifiable.

38. Further, the Management issued her a letter dated 16-11-2013/Exh. 16 which is a Warning Letter as she was warned for misbehaving with Mr. Vaibhav Khorgaonkar but said Vaibhav Khorgaonkar has not been examined to prove the allegations. Further, it is also their allegation that her attitude towards her work and colleagues, led the Management to lose confidence in her abilities to continue with her services with the Management and therefore decided not to retain her in the service and decided to terminate her and as such she was terminated vide letter dated 04-01-2014 but to this I have already stated above that for the alleged serious allegations like misconduct and loss of confidence in work, the Management did not hold domestic inquiry which position is admitted by them that no inquiry was conducted but on the other hand the Management tries to place the burden on the Party I that she did not step in the witness box to deny the allegations made by the Management. This explanation is totally not sustainable in law for the simple reason that since the allegations have been made by the Management, it is mandatory and duty cast on them to prove and discharge the same and the Management should not depend on the case of the Party I or the weaknesses of the Party I as it is the Management who has terminated her services on serious grounds and cannot expect the Party I to prove the allegations which position is not accepted in law.

39. Learned Advocate, Shri G. K. Sardesai for the Party II has placed reliance on the authorities:

1. State Bank of Travancore v/s Prem Singh in 2019-III-LLJ-123 (Del) wherein the Hon'ble High Court of Delhi has held that "*when employee acts in manner by which management loses confidence in him, reinstatement cannot be ordered because it would neither be desirable nor expedient to continue employee in service – In case of loss of confidence, only compensation could be awarded – Respondent not entitled to relief of reinstatement as Petitioner lost confidence in Respondent on account of unauthorized withdrawals made by him from account of customer.*" To this it is seen that the ratio applied in this case is not applicable to the facts of the present case as in this case the charges were not specified and in the authority upon, the charges were also pleaded, specified and proved and further the allegations of loss of confidence was also not proved by the Management in this case as the Management failed to show as to what was the confidence and the trust was lying with the Party I's job so as to

make allegations that there was loss of confidence from the Party I during her service and further to succeed the plea of loss of confidence, the Management must be objectively satisfied and in the instant case, the objective satisfaction of misconduct has not been shown nor proved by the Employer.

2. S. K. Kadam v/s Dhackjee & Company Pvt. Ltd. 1977 Lab I.C. 602 Bombay wherein the Hon'ble Apex Court held that *in case of misconduct, it is open for the Employer either to hold inquiry and dismiss the employee by way of punishment or discharge him or her and pay all the retrenchment benefits. It further held that the Employer has a choice to adopt either of courses, provided action is bonafide and further held that the Employer is not bound to hold inquiry and visit the employee with penal action, even if such reason happens to be misconduct of the employee. It is only the absence of such reason, and not mere failure to hold enquiry, that would render such discharge mala fide or an act in colourable exercise of power raising and inference of victimization.* But this authority also does not come to the rescue of Party II as in view of the decision passed by the **Hon'ble Supreme Court in the case of Kanhailal Agarwal (2001) 9 SCC 609** wherein it has been held that *the Employer to rely on loss of confidence must establish that the employee has a position of confidence and trust so as to make such allegations which is not so in this case.*

3. The Municipal Corporation of Greater Bombay v/s P. S. Malvenkar & Others, AIR 1978 SC 1380 wherein the Hon'ble Apex Court has held that "*Where an employer is entitled under the Standing Orders to remove its employee from service by giving notice as well as by way of punishment for misconduct after holding domestic enquiry, the question whether a particular order terminating the service of an employee is by way of punishment or not has to be determined on the facts and circumstances of each case and the form of the order is not decisive of the matter. The two powers are distinct and independent and as far as possible, neither should be construed so as to emasculate the other or to render it ineffective.*" The ratio applied in this case is not applicable to the facts of the present case which infact benefits the Party I's case and Learned Advocate, Shri S. P. Gaonkar has rightly argued that this judgment is of a smaller bench and therefore the law laid down by the larger bench in the case of **Engineering Laghu Udhog Employees Union v/s Judge Labour Court, (2003) 12 SCC 1** gets applicable as in this case it was held that "even

though the termination was made by following unfair labour practices or by way of victimization, it would be open to the Tribunal to pay compensation even in a case where ultimately charges are proved, despite holding that the order of termination is valid for the reason that principles of natural justice have not complied with" and in the instant case, the Employer has not given any reasons as to why no disciplinary action was taken and why no domestic inquiry was held against the Party I when such serious allegations were made of misconduct and loss of confidence in work.

4. S. K. Awasthi v/s M. R. Bhope Presiding Officer, 1st Labour Court and Others 1994 (68) (Bom., H. C.) 841 wherein it is held by our Hon'ble High Court that *"the terminated employee was duty bound to enter the witness box and did not attempt to prove defence version and perhaps she had no courage to do so. Initial onus is always on the Management to justify its action. Some evidence is led on behalf of the Management, it is necessary for the employee to lead rebuttal evidence and make the defence version atleast probable"*. But this citation is not applicable to facts of the present case as in the said case the charge-sheet was issued and dismissal was done after the domestic enquiry which is not so in the instant case.

5. Firestone Tyre & Rubber Company of India (P) Ltd. v/s Management and Others (1973) 3 SCR 587 and in Workmen of Motipur Sugar Factory Pvt. Ltd. v/s Motipur Sugar Factory, 1965 AIR 1803 Supreme Court, where it was held that *"it is well settled by a number of decisions of this Court that where an employer has failed to make enquiry before dismissing or discharging a workmen it is open to him to justify the action before the tribunal by leading all relevant evidence before it. In such a case the employer would not have the benefit which he had in cases where domestic inquiries have been held. The entire matter would be open before the tribunal which will have jurisdiction not only to go into the limited questions open to a tribunal where domestic inquiry has been properly held but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified."* But in this case also no domestic inquiry was conducted at all and the Employer directly took the step of terminating the employee on serious allegations.

6. Bharat Iron Works v/s Bhagubhai Balubhai Patel And Others (1976) 1 Supreme

Court Cases 518 in this case the employees were terminated after holding valid domestic enquiry and it was again a case of dismissal after conducting domestic enquiry. In fact in this case the Hon'ble Apex Court has clearly held that in a case where there is no defect in procedure in the course of a domestic enquiry into the charges for misconduct against an employee, the Tribunal can interfere with an order of dismissal where the finding is perverse or there is no prima facie case which is not so in the instant case. In fact, this citation is not at all in favour of the Employer as it is clearly held that *"victimization is a serious charge by an employee against an employer, and, therefore, it must be properly and adequately pleaded giving all particulars upon which the charge is based to enable the employer to fully meet them. The charge must not be vague or indefinite being as it is an amalgam of facts as well as inferences and attitudes. The onus of establishing a plea of victimization will be upon the person pleading it. Since a charge of victimization is a serious matter reflecting, to a degree, upon the subjective attitude of the employer evidenced by acts and conducts, these have to be established by sage and sure evidence. Mere allegations, vague suggestions and insinuations are not enough. All particulars of the charge brought out, if believed, must be weighed by the tribunal and a conclusion should be reached on a totality of the evidence produced. Again, victimization must be directly connected with the activities of the concerned employee inevitably leading to the penal action without the necessary proof of a valid charge against him."* But this was again a case of dismissal after conducting domestic inquiry.

7. Buckingham and Carnatic Co. Ltd. v/s Workers of the Buckingham Company (1952) LAC 490 wherein it was held that *"the question of loss of confidence can arise only in cases where employee holds some position of confidence. And that post of a motor mechanic, held by the petitioner, cannot be said to be such post to warrant the application of this doctrine. The Apex Court held "We are unable to subscribe to any such proposition. It is difficult to trace any basis or warrant for assumption that "loss of confidence" plea can be confined only to the employees holding confidential posts and not to others. Every contract of employment implies trust and confidence as its indispensable ingredients. Some posts, no doubt, happen to be of highly confidential nature. That does not mean that confidence in the employee is a dispensable element in other posts"*. There is no dispute about the settled position of law as held

above but in the instant case the allegations of loss of confidence is neither specified nor proved by the Employer and the Employer also failed to show that the employee was holding a position of trust and confidence and on the alleged act of the employee there was danger to the Management.

8. In Writ Petition No. 286 of 1997 Shri Vermon Lobo, Petitioner v/s The Himalaya Drug Company and the Presiding Officer, Industrial Tribunal, Panaji wherein our Hon'ble High Court dismissed the petition filed by the Petitioner for his termination on the medical grounds and further held that the Medical Certificates produced by the Petitioner were not by itself a substantive piece of evidence and it can only be corroborative piece of evidence and to prove its contents it is necessary to examine the author of such Medical Certificate and in this case, a careful perusal shows that a charge-sheet was issued which is not so in our case because in the case at hand, the employer has only made allegations and no formal charges are framed.

40. Hence, in view of the above reasons and guided by the above authorities, it is abundantly clear that Party I succeeded in proving that the Party II has not complied with the provisions of I. D. Act and the principles of natural justice have also not been followed and therefore the action of the Management in terminating her services w.e.f. 04-01-2014 is illegal, unjustified and bad-in-law.

Issue No. 3

41. The Party I in Para 25 of her Claim Statement states that since her termination, she is unemployed and denying this position by the Employer, this particular issue has been framed which is a burden in fact more on Party I to prove so that she is unemployed upon her termination but to this it is seen that the Party I has not led any evidence to that effect. But subsequently, by way of amendment to the pleadings in the Written Statement by the Employer, it has come on record that the Party II came to know that the Party I has been gainfully employed from the date of her termination and continuous to be gainfully employed till date. It has also come on record that immediately after termination, the Party I was employed with M/s Choksi Laboratories Ltd. at Verna – Goa and was drawing a total salary of Rs. 45,000/- and thereafter at M/s Fresenius Kabi, Sattari – Goa and is drawing a total salary of Rs. 65,000/- with all allowances and with a basic pay of Rs. 29,000/- and continues to be employed in the said Company. To the amendment to the Written Statement, the Party I/Workman filed Rejoinder at Exh. 61 denying the fact that Party II were subsequently informed about her subsequent employment. In the Rejoinder

she had also denied the details of her employment but it is pertinent to note that in the entire Rejoinder she has not denied anywhere that she is unemployed and she has categorically stated that upon her illegal dismissal by the Party II, she worked with M/s Choksi Laboratories from January, 2014 to March, 2015 and she started with a monthly salary of Rs. 11,170/- and her last drawn salary was Rs. 22,449/-. She has further pleaded that thereafter from the month of May, 2015, the Party I is employed with M/s Fresenius Kabi Pvt. Ltd and she started with a salary of Rs. 40,477/- and her current salary is Rs. 60,534/- with a basic salary of Rs. 26,500/-. She has further pleaded that she is entitled to the difference in back wages, continuity of service and consequential benefits and according to her if she was not illegally terminated, she would have earned more being in the employment of Party II/Employer. Hence, according to her she is losing around Rs. 46,000/- on a monthly basis on account of illegal termination by the Party I.

42. It is pertinent to note that these are all the pleadings of the Party I workman which is not supported with any documentary evidence as she has not led any additional evidence to that effect.

43. On the other hand, the Employer/Party II filed an application at Exh. 79 for production of documents by issuing summons to the Party i.e. to the Officer of M/s Fresenius Kabi u/s 139 of the Indian Evidence Act which application was allowed by this Tribunal vide order dated 06-01-2022 and the Sr. Executive-HR of M/s Fresenius Kabi attended the Court on behalf of the Company and produced six documents i.e.

- (1) The Appointment Letter dated 20-05-2015 of the Party I in M/s Fresenius Kabi,
- (2) The Increment Letter dated 20-05-2019
- (3) Increment Letter dated 16-03-2020
- (4) Letter of Experience dated 08-08-2020
- (5) Relieving Letter dated 08-08-2020 and
- (6) Salary Slips of the Party I for the month of January, 2020 to April, 2020, June, 2020 to August, 2020.

44. I have perused all these documents in deciding the present issue. These documents conclusively prove and shows that though she was issued the Termination Letter dated 04-01-2014, she was employed with M/s Fresenius Kabi as on 20-05-2015 till 08-08-2020 which was the day on which she was relieved from her services. The letter dated 08-08-2020 which is a Relieving Letter from M/s Fresenius Kabi shows that the said Relieving Letter was made with reference to her Resignation

Letter dated 09-07-2020 which also proves that the Party I had submitted her resignation letter to Fresenius Kabi on 09-07-2020 which was accepted by the Management of M/s Fresenius Kabi and thus she was relieved from her services from this Company on 08-08-2020 which goes to show that from 08-08-2020 the Party I is unemployed.

45. Admittedly, the Party I did not chose to lead any evidence on this aspect and the evidence led by the Employer/Party II is limited to the extent of Party I being in service at M/s Fresenius Kabi from 20-05-2015 to 08-08-2020 which shows that she has worked with them for a limited period of 5 years, 2 months and as on today the Party I is unemployed as there is no evidence led by the Party II to show that presently she is gainfully in services at some other establishment. Therefore, this issue needs to be answered in the affirmative.

46. Since, I have already discussed while deciding issue No. 2 that the termination of Party I by Party II was totally illegal, without following the due process of law and was in utter violation of the principles of natural justice, therefore according to me the Party I is entitled for reinstatement with full back wages with continuity in service and other benefits to which she was entitled with the Party II Company.

47. Learned Advocate, Shri G. K. Sardesai for the Party II has placed reliance on the following authorities:

1. In **Assam Oil Company v/s its workmen reported in 1960 AIR 1264** wherein the Hon'ble Supreme Court held that *"as the Employer was dissatisfied with the work of the employee and had lost confidence in her and in such case it would not be fair either to the Employer or to the employee to direct reinstatement"*. But to this it is seen that the ratio applied in this case is not applicable to the facts of the present case as loss of confidence would come only if position of trust was established. In the instant case, the Party II failed to prove how Party I's job in the Stores Department was of or whether it was a post of confidence and trust and whether she had shown distrust towards her work or that there was any loss of confidence from her side. In the authority relied upon, the Employer had proved the misconduct by way of evidence which is not so in this case and in the instant case no domestic inquiry was conducted and it has been held in the case of **Engineering Laghu Udhog Employees Union v/s Judge Labour Court (2003) 12 SCC** wherein the Hon'ble Apex Court has held that *for misconduct, the Employer has to ordinarily hold an enquiry and only*

in extraordinary circumstances can dispense with an enquiry and in the instant case the Employer has not pleaded nor proved what are the extraordinary circumstances which forced them not to hold enquiry. Therefore, this citation is of no help to the Employer.

2. In **Rajasthan State Road Transport v/s Phool Chand, reported in 2018 (18) SCC 299**, the Apex Court held that *"it is necessary for the terminated workman to plead and prove with the aid of evidence that after his dismissal from the service, he was not gainfully employed anywhere and had no earning to maintain himself or/and his family. The Employer is also entitled to prove it otherwise against the employee, namely, that the employee was gainfully employed during the relevant period and hence not entitled to claim any back wages. Initial burden is, however, on the employee."* The ratio applied in this case is not applicable to the facts of the present case as in the instant case no domestic enquiry was conducted and Section 25-F was not complied and reliance is placed in the order passed by our **Hon'ble High Court in Writ Petition No. 868 of 1984 dated 13-10-1987 between Puthiya V. Raghavan and M. K. Bhaskaran & Others** wherein it has been held that *where the domestic inquiry was not conducted, the employee is entitled to reinstatement with continuity of service and back wages* and since it is the contention of the Employer that as on today the Party I is gainfully employed, the burden lies on them to prove so, which the Employer has failed in proving.

3. In the case of **Kendriya Vidyalaya Sanghatan v/s S. C. Sharma reported in 2005 (2) SCC 363** wherein the Supreme Court while denying back wages to the workmen observed *"when the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record material as to rebut the claim. In the instant case, the respondent had neither pleaded nor placed any material in that regard"*. The ratio applied in this case is not applicable for the same reasons as discussed above. Since the Employer failed to lead proper evidence to substantiate their claim that Party I was gainfully employed upon her termination as they succeeded in proving her employment post termination only for five years, therefore, it can be safely concluded that the Party I is unemployed since the date of her termination and as such she is entitled for all the reliefs as prayed.

4. Haryana Urban Development Authority v/s Om Pal (2007) 5 Supreme Court Cases 742

wherein the Apex Court has held that *"despite a wide discretionary power conferred upon the Industrial Courts under Section 11-A of the 1947 Act, the relief of reinstatement with full back wages should not be granted automatically only because it would be lawful to do so. Grant of relief would depend on the fact situation obtaining in each case"*. The ratio applied in this case is not applicable to the facts of the present case as in the authority relied upon, the workman had worked for a very short period and he was appointed as a daily wager which is not so in our case.

5. Indiana Engineering Works (Bombay) Pvt. Ltd. v/s Presiding Officer, V Labor Court & Others 1998 III LLJ (Suppl) 720 wherein the Hon'ble High Court held that *"the workman was not entitled to back wages and owes a duty to disclose full details of facts which are purely within his knowledge"*. The ratio applied in this case is not applicable to the facts of the present case as in the instant case the workman is not gainfully employed anywhere and in the authority relied upon the workman was gainfully employed elsewhere.

6. J. K. Synthetics Ltd. v/s K. P. Agrawal and Another (2007) 2 Supreme Court Cases 433

wherein in this case the Apex Court has held that *"there is a misconception that whenever reinstatement is directed, continuity of service and consequential benefits should follow as a matter of course – whenever courts or tribunals direct reinstatement, they should apply their judicial mind to the facts and circumstances to decide whether continuity of service and/or consequential benefits should also be directed"*. There is no dispute about the settled position of law but in the instant case the employee is not gainfully employed anywhere, there is an illegal termination from her services and according to me the employee was being victimized as the allegations of misconduct and loss of confidence are not proved by the Employer. Hence, under such circumstances, she is entitled for reinstatement in job with full back wages.

48. The Party I is entitled for re-instatement in her services with continuity with full back wages except for the said period of five years when she was in services at M/s Fresenius Kabi from the period 20-05-2015 till 08-08-2020. She is also entitled for all the other benefits in her services to which she is

entitled with the Employer/Party II. Hence, in view of the above reasons, issue No. 3 stands answers in the affirmative.

Accordingly, I pass the following Order:

ORDER

(1) The action of the Management of M/s Merck Ltd./M/s Procter & Gamble Health Ltd., in terminating the services of the Party I is illegal and unjustified.

(2) The Party I/Workman, Smt. Anupa Desai is entitled for re-instatement with continuity in her services with full back wages except for the period of five years when she was in services at M/s Fresenius Kabi from the period 20-05-2015 till 08-08-2020 and for all the other benefits in her services to which she is entitled with the Employer/Party II.

(3) No order as to cost.

(4) Inform the Government accordingly.

Dated : 20-01-2022.

Place: Panaji, Goa.

Sd/-

(Bela N. Naik)

Presiding Officer,

Industrial Tribunal and Labour Court.



Department of Mines & Geology
Directorate of Mines & Geology

Corrigendum

No. 01/22/2021/PER/ADM/MINES/2042

Read: 1) Order No. 01/22/2021/PER/ADM/MINES/1414 dated 26-10-2021.

The expenditure on pay and allowances in respect of Shri Sanford Fritz Mascarenhas is debited to following Budget Head:-

- 2853 — Non-Ferrous Mining and Metallurgical Industries,
- 02 — Regulation and Development of Mines,
- 001 — Direction and Administration,
- 02 — Strengthening of Mines Department (Plan),
- 01 — Salaries.

The Budget Head in the above para of the order in the preamble shall be substituted to be read as under:-

- 2853—Non-Ferrous Mining and Metallurgical Industries,
 02—Regulation and Development of Mines,
 102—Mineral Exploration,
 01—Field Investigation Including Drilling (Plan),
 01—Salaries.

The remaining part of the Order remains unchanged.

By order and in the name of the Governor of Goa.

Vivek H.P. (IAS), Director & ex officio Joint Secretary (Mines & Geology).

Panaji, 11th February, 2022.

◆◆◆
Department of Revenue

—
order

No. 35/2/2013-RD/96

In exercise of the powers conferred by Section 9A of the Indian Stamp Act, 1899 (Act No. 2 of 1899), as in force in the State of Goa, the Government of Goa hereby permits the Life Insurance Corporation of India, Goa Divisional Office, Panaji (hereinafter referred to as the "LIC Goa") to pay consolidated stamp duty of Rs. 2,00,000/- (Rupees Two lakhs only) in lieu of payment of duty by affixing revenue stamp on the receipts issued by its offices in the State of Goa towards payment of premium on life insurance policies and various other payments made to external and internal customers, viz., staff, agents and contractors, etc., (hereinafter referred to as the "said receipts"), with effect from 1st January, 2022 to 31st December, 2022, subject to the following conditions, namely:-

- (a) In case the stamp duty chargeable on the said receipts issued during the above period falls short of the stamp duty consolidated herein and paid to the Government, the excess consolidated stamp duty shall not be refunded.
- (b) In case the stamp duty chargeable on the said receipts issued during the above period exceeds the stamp duty consolidated herein and paid to the Government, the balance amount due towards the stamp duty shall be paid to the Government Treasury by the LIC Goa latest by the first week of January, 2023.

- (c) A detailed report of the total stamp duty payable on the said receipts issued by the offices of the LIC Goa, in the State of Goa, shall be submitted to the Secretary (Revenue), Revenue Department, Government of Goa, on or before 31-12-2022.

By order and in the name of the Governor of Goa.

Isha M. Sawant, Under Secretary (Revenue-I).

Porvorim, 9th February, 2022.

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Order

No. 3/2/2005-RD/Part-I/3194

In exercise of powers conferred by the first proviso to Article 40 of the Legislative Diploma No. 645 dated 30th March, 1933, the Government of Goa hereby directs that the election of the Managing/Administrative Committees of the Devasthanans in the State of Goa for the term beginning on the 1st day of April, 2022 shall be conducted on the 2nd Sunday of March, 2022 due to ensuing General Election 2022 to the Legislative Assembly of Goa on 14th February, 2022.

By order and in the name of the Governor of Goa.

Isha M. Sawant, Under Secretary (Revenue).

Porvorim, 10th February, 2022.

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Department of Social Welfare

Directorate of Social Welfare

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Addendum

No. 13-264/2020-21/Admn/7323

Read: Order No. 13-264/2020-21/Admn/4504 dated 22-12-2021.

The salary and allowances shall be governed as laid down under Rule 19 of the Goa Rights of Persons with Disabilities First (Amendment) Rules, 2021 in the pay scale 15,600-39,100+ 6,600/- in the Pay Level 11, the State Commissioner shall be entitled for the salary and allowances as admissible to a Senior Scale Officer of Goa Civil Services.

Additional allowances and entitlements of the State Commissioner shall be governed as per O.M. 7/11/2012-FIN (DMU) dated 11-12-2017 of Finance Department, Government of Goa.

He shall be entitled for 8 days casual leave per year.

By order and in the name of the Governor of Goa.

Siddhivinayak Naik, Director & ex officio Jt. Secretary (SW).

Panaji, 8th February, 2022.

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